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June 23, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW TW-A325
Washington, D.C. 20554

Re: In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129

Dear Ms. Salas:

Enclosed herewith for filing are the original and four (4) copies of MCI WorldCom's Comments on Petitions for Reconsideration regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI WorldCom Comments on Petitions for Reconsideration furnished for such purpose and remit same to the bearer.

Sincerely yours,

Don Sussman

Enclosure
DHS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	

MCI WORLDCOM, INC.
COMMENTS ON PETITIONS FOR RECONSIDERATION

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June 23, 1999

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Summary

When the Commission adopted its anti-slamming rules late last year, it recognized that they would be extremely difficult to implement and invited industry to formulate a more effective mechanism for dealing with complaints. On March 30, 1999, an industry group submitted a proposal calling for a neutral, industry-funded "Third Party Administrator" (TPA) to switch consumers back to their preferred carriers and, if appropriate, ensure credits are issued. The proposed TPA would create a streamlined and efficient process that will operate to resolve the vast majority of slamming complaints quickly, while providing financial disincentives for carriers to switch customers without proper authorization.

The TPA proposed in the Joint Petition, when combined with third party verification methods employed by companies such as MCI WorldCom, is consistent with Section 258 and offers customers protection from unauthorized carrier changes in a straight forward manner. Establishing an independent TPA is the fastest and most efficient way to resolve the many issues surrounding the Commission's, and industry's, efforts to mitigate unauthorized conversions, and should take precedence to resolving issues raised in petitions for reconsideration that were filed in the instant proceeding. The pleading cycle for the Joint Petition is complete; the time is ripe for the Commission to promote industry's efforts to establish an independent third party administrator, as outlined in the Joint Petitioner's waiver request.

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MCI WORLDCOM, INC.
COMMENTS ON PETITIONS FOR RECONSIDERATION

I. Introduction

In the Second Report and Order and Further Notice of Proposed Rulemaking (Order),[1] the Commission adopted rules aimed at implementing section 258 of the Communications Act, which makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."[2] In

[1] In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129 (rel. Dec. 23, 1998)(Order).

[2] 47 U.S.C. §258

so doing, the Commission's stated goals were to "take the profit out of slamming,"[3] and to strengthen the rights of consumers in three areas: (1) the relief given to slamming victims; (2) the method by which a carrier must obtain customer verification of preferred carrier change requests; and (3) the method by which a consumer can "freeze" his or her existing carrier, thus prohibiting another carrier from claiming that is has been authorized to request a carrier change on behalf of the consumer.[4]

When the Commission adopted its anti-slamming rules late last year, it recognized that they would be extremely difficult to implement and invited industry to formulate a more effective mechanism for dealing with complaints.[5] On March 30, 1999, an industry group submitted a proposal calling for a neutral, industry-funded "Third Party Administrator" (TPA) to switch consumers back to their preferred carriers and, if appropriate, ensure credits are issued.[6] The proposal differs from the Commission's announced rules in several respects: (1) for unpaid

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[3] Order at ¶4.

[4] Order at ¶5.

[5] In its Order, the Commission endorsed an alternative to the rules it had established, recognizing that an independent third party liability administrator could "discharge carrier obligations for resolving disputes among carriers and subscribers with regard to slamming," Order at ¶55, and "might better serve to address our concerns". Id

[6] See In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Joint Petition For Waiver, filed By MCI WorldCom, Inc. on behalf of MCI WorldCom, Inc, AT&T Corp., the Competitive Telecommunications Association, Sprint Corporation, the Telecommunications Resellers Association, Excel Communications, Frontier Corporation, and Qwest Communication Corporation on March 30, 1999 (Joint Petition).

charges incurred beginning on the 31st day from the date an unauthorized conversion occurred, the unauthorized carrier must provide the total invoice amount to the third party liability administrator, which will refer it to the preferred carrier; the preferred carrier shall bill the customer at a proxy level of 50 percent of the unauthorized carrier's total charges for service rendered on or after Day 31; (2) customers who paid their bill will receive a refund of 50 percent of their payment, provided the unauthorized carrier compensates the preferred carrier, an amount that in most cases is likely to exceed the payment a customer would receive under the Commission's rules; (3) while carriers will immediately suspend billing and collection activity for a customer raising a challenge, credits and compensation only flow once the third party administrator has been given 30 business days to decide if an unauthorized conversion occurred; and (4) carrier to carrier compensation and customer proxy payments, if applicable, are limited to the most recent three months of usage from the date of the customer complaint to the TPA. These differences permit the creation of a much more streamlined and efficient process that will operate to resolve the vast majority of complaints quickly, while providing financial disincentives for carriers to switch customers without proper authorization.[7]

The TPA proposed in the Joint Petition, when combined with third party verification methods employed by companies such as MCI WorldCom, Inc. (MCI WorldCom), is consistent with Section 258 and offers customers protection from unauthorized carrier changes in a straight forward manner, and for the first time, would give consumers, government agencies, and carriers a single point of contact that will: (1) quickly resolve customer allegations of unauthorized

[7] See Joint Petition.

conversions; (2) independently determine a carrier's compliance with the Commission's verification procedures; (3) honor Commission's requirements that customers be compensated for their inconvenience; and (4) administer carrier-to-carrier liability. The pleading cycle for the Joint Petition is complete; the time is ripe for the Commission to promote industry's efforts to establish an independent third party administrator, as outlined in the Joint Petitioner's waiver request. Establishing an independent TPA is the fastest and most efficient way to resolve the many issues surrounding the Commission's, and industry's, efforts to mitigate unauthorized conversions, and should take precedence to resolving issues raised in petitions for reconsideration, filed in the instant proceeding.[8]

On March 18, 1999, pursuant to 47 CFR §1.429, twelve parties filed petitions for reconsideration and/or clarification of portions of the Commission's Order. Pursuant to Public Notice released June 1, 1999, MCI WorldCom respectfully submits its comments on those petitions.

II. Customer Crediting Rules Are Unworkable and the "Absolution" Remedy Is Legally Suspect

For the purpose of acting on reconsideration, MCI WorldCom urges the Commission to separate two distinct issues: (1) whether the rules it has adopted with respect to customer

[8]It should be noted that resolving the many issues raised in the petitions for reconsideration filed in the instant proceeding does not warrant a lift of the stay of the Commission's rules, granted by the US Court of Appeals on May 18, 1999. MCI WorldCom, Inc. Petition v FCC, No. 99-1125 (D.C. Cir. May 18, 1999) (order granting stay).

crediting and carrier-to-carrier liability are workable, practical, and implementable as an anti-slamming tool and (2) whether the concept of awarding the remedy of free service as a matter of right is lawful and within the Commission's jurisdiction.

On the first topic, volumes have been written and a court stay won, based on the arguments that the Commission's rules invite fraud, are impossible to implement,[9] and add to customer confusion. Additionally, as MCI WorldCom pointed out its Motion for Stay, filed May 4, 1999, not only are the new rules irrational, but they impose extraordinary burdens upon (and create conflicts for) the preferred carrier, requiring it to adjudicate its own customer's slamming complaints, when it obviously stands to gain by finding the complaints meritorious.[10]

SBC's Petition for Reconsideration and Clarification also highlights the conflict that exists between current ILEC billing and collection practices and the Commission's new slamming rules.[11] SBC, in particular, points out that the current ILEC practice of immediately crediting the subscriber's account for any alleged slamming charges would appear to be

[9] For example, as the Joint Parties pointed out, the rules would require the development of electronic bonding at a level never before imagined, since the bonding would need to exist between all IXCs and all LECs simultaneously. Also, without a requirement that ILECs update their CARE records -- to provide all carriers information on which carriers provide service to a customer -- the Commission's slamming rules cannot be implemented in a competitively neutral fashion. Currently, only the executing carrier knows from which carrier a customer obtains service, so it has an advantage competing for that customer.

[10] In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Motion for Stay Pending Judicial Review, filed May 4, 1999 at i-iii.

[11] SBC Petition at 7-9.

inconsistent with the slamming dispute resolution procedures in the Order.

In MCI WorldCom's opinion, the most effective, competitively neutral, and consumer-friendly mechanism to handle billing and collection issues associated with slamming is implementation of the Joint Petitioner's TPA proposal. The creation of such a TPA entity would remove the control that ILECs have today over the customer crediting and recourse process in the majority of cases where the ILEC is the billing agent for the long distance carrier. It is a simple matter for an ILEC today to credit the customer and present the bill to the long distance carrier without the long distance carrier agreeing to the credit and recourse. In doing so, the ILEC is effectively spending the long distance carrier's money with no ability on the part of the long distance carrier to curb overzealous ILEC practices. The TPA would be the first step in changing that relationship, by ending the ILEC-initiated "crediting/recourse" process and substituting a suspension of the customer's long distance charges pending the outcome of the dispute resolution process. This ensures that long distance companies are not financially harmed from consumers who fraudulently seek 30 day credits, or ILECs who are overzealous in their decisions to issue credits for any consumer complaint. It is a significant and material benefit that makes funding and supporting the TPA possible from a business perspective. [12]

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[12] Significantly, a "suspension" model also benefits consumers. There is simply no reason to create confusion in the resolution of unauthorized conversion complaints by issuing "credits" to a customer, and then -- some weeks or a month later -- having an exonerated carrier pursue the customer for charges due and owing. In addition, the ILEC "crediting/recourse" model, because it opens the door to potential fraud, drives carriers to create their own direct remit bills, although customers often prefer one combined bill for telephone service. The "crediting/recourse" model support the Commission's rules as promulgated. In today's environment, only a handful of local exchange carriers provide the customer identification detail necessary to support re-billing in the

Moreover, there is no legal impediment to a lawful exercise of Commission authority that might conflict with privately negotiated billing and collection contracts. The Commission can abrogate carrier contracts if it finds that there is an over-riding public interest reason to do so. Under the Sierra-Mobile doctrine established by the Supreme Court, a carrier-to-carrier contract once made cannot be superceded by one party to the contract, through the filing of a tariff with provisions that are inconsistent with the contract, unless the regulatory agency finds that the contract is contrary to the public interest.[13] The Sierra-Mobile doctrine thus assumes that the agency has authority to invalidate a carrier's contract. In fact, the Commission has relied upon this power to invalidate carrier contracts.[14] The Commission's authority to override the customer crediting aspects of the current billing and collection contracts is unassailable. The public policy reason to do so is to create a process that results in a smaller amount of disputed dollars needed to be collected by exonerated carriers from confused and unhappy customers who understand only that they received a "credit" weeks before. The Commission should not hesitate to use this authority here, where billing and collection contracts are not "negotiated" in the ordinary sense of

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event an accused carrier is exonerated. By contrast, the TPA does support the opportunity for the exonerated carrier to collect for services rendered pursuant to a valid authorization.

[13] FCC v. Sierra Pacific Power Co., 350 U.S. 348(1956); United Gas Co. Vs. Mobile Gas Corp., 350 U.S. 332 (1956)(collectively, the "Sierra-Mobile" doctrine). Moreover, nothing in the Commission's 1986 decision to regulate billing and collection under Title I suggests that the Commission could not now exercise Title I authority to the extent necessary to effectuate its Title II authority in connection with slamming and customer-carrier and intercarrier liability. Detariffing of Billing and Collection, 102 FCC 2d 1150 (1986).

[14] Western Union Telegraph Company v. FCC, 822 F2d 80 (1987)(affirming the Commission's Docket 20099 decision declaring unlawful interconnection contracts that were not in the public interest).

the term, but are pure contracts of adhesion with monopoly billing providers. The Commission can and should decide that ILECs may not issue credits, and recourse long distance carriers, upon receipt of a complaint concerning a participating carrier.

Additionally, as Frontier points out, the Commission's rules require authorized carriers to restore premiums (such as frequent-flyer miles) that a consumer would have earned but for the allegedly unauthorized change.[15] As an initial matter, MCI agrees with Frontier that the Commission should abrogate its no-fault standard, and apply the statutory remedy only upon adequate proof of an unauthorized intentional change in a consumer's preferred carrier.[16] Also, as Frontier correctly explains, the premiums are typically offered to the customer for using that carrier's services. In the instance where a customer has been changed to an unauthorized carrier, the customer has not used the authorized carrier's services. The Commission's rule unfairly penalized the authorized carrier, requiring it to provide premiums for services offered by another carrier. The authorized carrier should not be required to offer the customer premiums for services obtained from another (i.e., the unauthorized) carrier.

On the second topic, many of the petitioners challenge the legality of requiring carriers to provide up to 30 days free service as a matter of right. While some petitioners have suggested that this is, in part, due to the presence of a biased decision-maker, most of the arguments rest on irreconcilable differences between a remedy/punishment of free service and the Congressionally

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[15] Frontier Petition at 18.

[16] Frontier Petition at 13.

specified remedy/punishment of the unauthorized carrier disgorging its ill-gotten gains.

The arguments against up to 30 days free service are meritorious and serious. Among those raised by petitioners, a few of the more substantial ones are summarized here.

First, the Commission simply does not have the authority to replace this Congressionally-mandated remedy with one that it prefers.[17] Section 258 of the Communications Act contains specific measures for controlling unauthorized PIC changes that balance the interest of consumers and their authorized carriers and, at the same time, punish the carriers that are guilty of unauthorized conversions.[18] Section 258 explicitly states in part that:

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[17]See AT&T Petition at n. 7 (Commission's general rulemaking authority applies only where "not inconsistent with this Act") 47 U.S.C. §154(i), Sprint Petition at 7 ("The Commission cannot simply ignore Congress' words and attempt to write a new statute out of cloth") Western Union v. FCC, 729 F.2d 811, 817 (D.C. Cir., 1984), Sprint Petition at 7 (the fact that Section 258(b) "does not reference charges that have been paid does not give the Commission the authority to assume responsibility for deciding whether such charges or portion of such charges need be paid by consumers claiming to have been slammed. Such decision is properly made by Congress), American Ship Building Co. V. NLRB, 85 S.Ct. 955, 967 (1965), Frontier Petition at 3 ("[a] reviewing court 'must first exhaust the "traditional" tools of statutory construction' to determine whether Congress has spoken to the precise question at issue.") Chevron USA, Inc v. Natural Resources Defense Council, 467 U.S. 834 (1984). (These tools include the examination of the statute's text, legislative history, and structure, as well as purpose. If the court's examination of the statute reveals a clear answer, "then Congress has expressed its intention as to the question, and defense is not appropriate.") Bell Atlantic Tel Cos. V FCC, 131 F.3d 1044, 1047 (D.C. Cir. 1997). Frontier Petition at n. 10 ("[I]t is only legislative intent to delegate such authority [to fill a gap] that entitles an agency to advance its own statutory construction for review under the deferential second prong of Chevron") See Chevron, 467 U.S. at 843-44; Bell Atlantic, 131 F.3d at 1049. Frontier Petition at 5 ("The agency's interpretation of an unambiguous statutory cannot trump the plain will of Congress") Southwestern Bell Corp. V. FCC, 43 F.3d 1515, 1522 (D.C. Cir. 1995).

[18]See AT&T Comments at 2-12, Sprint Comments at 5-14, Frontier Comments at 3-9, GTE and Comments at 2-4.

> Any telecommunications carrier that violates the [Commission's verification] procedures. . . and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe.

This specific Congressionally-mandated remedy provides authorized carriers with an effective mechanism to obtain compensation for economic injury inflicted upon them by unauthorized carrier changes.[19]

Second, in 1995 the Commission, based on an extensive record, rejected numerous proposals to absolve victims of unauthorized carrier changes from the liability for charges by unauthorized carriers.[20] There the Commission found that "absolution would be inappropriate because "the 'slammed customer does receive a service, even though the service is being provided by an unauthorized entity," and that "except for the time and inconvenience spent in obtaining the original [carrier], consumers are not injured" by requiring them to pay charges at the authorized carrier's rate."[21] The Commission has not pointed to any new information that would support such a significant change in its position.

[19]AT&T Petition at 7. Additionally, even if the Commission did have the authority to absolve customers from payments for a given period of time, which it does not, as AT&T correctly notes, the Commission's decision is based on the mere speculation that some unauthorized carriers may not remit funds to customers' authorized carriers in accordance with Section 258. As AT&T points out, such an argument is not only unsupported, but completely unrelated. AT&T Petition at 5.

[20]<u>See</u> AT&T Petition at 2 citing <u>Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers</u>, 10 FCC Rcd 9560 (1995).

[21] <u>Id</u>.

In the context of the TPA, MCI WorldCom has proposed a mechanism that it and the Joint Parties agree is a workable, practical, and implementable approach to handling slamming complaints — a method vastly superior to the Commission's rules. Included in the TPA proposal is the consumers right to obtain up to 30 days' free service if the customer has not paid and the TPA finds an unauthorized conversion occurred. As stated in the Petition for Waiver,[22] the Joint Parties reserve their right to challenge the Commission's "absolution" rule. Should the credit ultimately be removed through Commission or court action, the Joint Parties may seek a modification to reflect the elimination of the 30-day credit.

III. The Commission must Modify and Clarify its Preferred Carrier Freeze Rules to Ensure That Consumers Benefit from a Competitive Marketplace

In its Petition for Reconsideration, AT&T requests that the Commission modify its rules to allow direct carrier submission of preferred carrier (PC) freeze changes.[23] As AT&T correctly notes in its Petition, there is no reasoned basis for the Commission's conclusion that third party verification provides adequate protection from abuse in cases of freeze orders submitted to a LEC directly by a customer, but not in the case of such orders directly submitted to the LECs by other carriers.[24] Additionally, there is no justification for believing that the third party verification process, which is sufficient for protecting consumers from unauthorized carrier

[22] Joint Petition at n. 4.

[23] AT&T Petition at 15.

[24] AT&T Petition at 16.

changes, is not sufficient to protect customers from unauthorized PC freeze changes.[25] In fact, as AT&T points out, the Michigan Public Service Commission recognized in 1996 that direct contact between the customer and the LEC is not necessary to the proper operation of the PC freeze mechanism.[26]

AT&T also correctly illustrates the short coming of requiring three-way calls to handle PC freeze changes. As AT&T explains, LECs should be required to provide automated handling of PC freeze orders and changes.[27] Such modifications are necessary because a substantial volume of carrier selection telemarketing occurs outside of normal business hours, when the LECs' business offices are closed and three-way calling is unavailable. Without automated means for changing PC freezes, many authorized carrier changes cannot be immediately implemented. As a result, customers will be unnecessarily delayed in benefitting from their choice of preferred provider.

The Commission should also clarify that executing carriers have an obligation, as supported by paragraphs 103 and 105 of the Commission's Order, to lift a PC freeze and switch a customer during the same three-way call. Since the Commission's Order became effective, MCI WorldCom has experienced difficulties making authorized carrier changes where PC freezes were involved in the Bell Atlantic, Pacific Bell and GTE areas. When MCI WorldCom makes a

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[25] Id.

[26] Id. At 17-18. See Sprint Communications Co. LO v Ameritech Michigan, Case No. U-11038, 117 P.U.R.4th 429 (1996).

[27] AT&T Petition at 20.

sale, the call is typically handed off to an independent third party for verification. After the carrier change is verified, MCI WorldCom electronically sends the request to change that customer to MCI WorldCom to the executing carrier. In instances where that customer had a PC freeze in place, but perhaps had forgotten, the PIC change is rejected by the executing carrier and sent back to MCI WorldCom. At that point, MCI WorldCom, which has already independently verified the carrier change request, contacts the customer and initiates a three-way call between the executing carrier, the customer, and MCI WorldCom. MCI WorldCom's experience is that Bell Atlantic will only sometimes accept the thee-way call, will only sometimes lift the PC freeze during the thee-way call, and will never switch the PIC during the three-way call. Pacific Bell and GTE refuse to even accept the three-way call.

First, this is clearly in violation of the Commission's Order. Paragraphs 103 and 105 clearly require executing carriers to handle PC freezes and PIC changes in a nondiscriminatory basis, and based on the most technologically efficient means available. Requiring the customer to call once to change the PC freeze status, and then again to change his or her PIC — when the goal of the original call was to take actions necessary to change the customer's PIC — is not technologically efficient, and certainly is not the practice employed by these executing carriers when their customers want to change their intraLATA toll or local providers.

Second, any concerns that the ILECs might have that the customer could somehow be manipulated or pressured by the presence of the IXC on the same call with the customer is nothing more than a red herring. The PIC change has already been verified by an independent third party. Additionally, if the executing carrier had such concerns, it could always ask the customer, who is currently part of the three-way call, whether the change is authorized. These ILECs are clearly acting in a manner that is anticompetitive, and which unnecessarily prevents customers from obtaining service and rates (i.e., MCI WorldCom's Five Cents Sundays) from the provider of choice in a timely manner.

The ILEC tactic of not accepting PC and PIC changes on the same call also requires carriers such as MCI WorldCom to incur significant carrier systems development costs which otherwise would have been unnecessary. Also, in the instances where a customer is required to call the ILEC back, again, to change his or her PIC, it is likely that the customer will not obtain the exact toll rates and programs most tailored to that customer. In such instances, the PIC change is treated as a BOC-initiated installation for dial-1 basic rates, which most likely is not the program the customer had originally requested.[28] As a result of these carriers' anticompetitve actions, if the customer wants specific promotions or services, the customer is required to contact the IXC after the ILEC changes the PIC.

The Commission should also clarify that its rules require ILECs to continue the freeze feature for a customer, regardless of which carrier he or she selects. For example, if a customer is on a three-way call with the executing carrier and the authorized carrier for the purpose of lifting the freeze so that he or she can change authorized carriers, the customer has the right during that phone call to continue the freeze on the new authorized carrier. There is no reasoned logic why

[28] This is because ILECs have no visibility into IXC services, promotions, etc. As an executing carrier such information is not necessary since its function is to execute PIC changes, not to sell services on behalf of IXCs.

such a customer request would not be honored, yet several ILECs have refused in practice to do so.

While MCI WorldCom believes the Commission's rules, as written, are perfectly clear, MCI WorldCom believes it is imperative for the Commission to reaffirm its commitment to ensuring that consumers reap the full benefits of vibrantly competitive markets, such as the long distance marketplace, and once again clearly state that LECs who offer PC freezes must accept properly verified customer requests to implement and/or lift and continue PC freezes from any carrier, and that if a three-way call is necessary to change a PC freeze, then executing carriers have an obligation to accept PC changes and PIC changes during the same call. In addition, the Commission's rules require ILECs to continue the freeze feature for a customer, regardless of which carrier he or she selects.

IV. The Commission Correctly Determined That Executing Carriers Should Not Be Permitted to Use Carrier Proprietary Network Information for Marketing Purposes

Paragraphs 106 and 132 of the Order clearly state that an executing carrier is prohibited from using information gained from a carrier change request or freeze modification for marketing purposes because such information is carrier proprietary information.[29] Nevertheless, in its petition SBC asserts that the Commission's Order does not prevent executing carriers from using such information to "win back" the customer after the carrier change is completed and the customer has been disconnected, even if the disconnect order codes reveal that the customer's

[29] Order at ¶106 and ¶132.

service was disconnected as the result of a carrier change order.[30] SBC argues that it is permitted to use the information it gained while acting as the executing carrier for marketing purposes because the Order: (1) only prevents the ILEC from using such information for marketing purposes during the freeze change (not after); (2) executing carriers have a First Amendment right to market to former customers, and (3) all carriers have access to such information through CARE transactions.

First, the Commission has correctly determined that the information at issue is carrier proprietary information, and that "the executing carrier otherwise would have no knowledge at that time of a consumer's decision to change carriers, were it not for the executing carrier's position as a provider of switched access services."[31] Second, the Commission correctly concludes that, as a result, "when an executing carrier receives a carrier change request, Section 222(b) prohibits the executing carrier from using that information to market services to that customer."[32] Contrary to SBC's self-serving interpretation, the Commission's prohibition under Section 222(b) is not limited to the call on which the information is obtained by the executing carrier. Therefore, executing carriers may not use such information for marketing purposes at the time they receive the information (during the call) or at any time after the call. The information remains proprietary and cannot be used for marketing purposes.

SBC argues that the First Amendment protects its ability to use such information to win

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[30] SBC Petition at 13-14.

[31] Order at ¶106.

[32] Order at ¶107.

back customers after the carrier change process is completed. SBC asserts that the Commission recognizes this right. SBC is incorrect. First, the Commission specifically addressed and rejected SBC's First Amendment argument in its Order, as it had already been raised by US West and GTE.[33] In the Order, the Commission correctly determined that it can regulate commercial speech in this instance because (1) the Commission's interest in promulgating the rule is substantial; (2) the rule directly advances the governmental interest; and (3) the rule is not more extensive than is necessary to serve the governmental interest.[34] Second, the Commission's Order specifically states that, while "section 222(b) does not prohibit all win back attempts," it does prohibit "those that are based on carrier proprietary information."[35] Clearly SBC has misinterpreted the Commission's Order.

Finally, SBC contends that it should be permitted to use information acquired as an executing carrier for marketing purposes because such information is available to all carriers through CARE transactions. This final contention is also wrong. First, all carriers do not have access to CARE transactions, and those that do, do not have real time access. Only the ILECs have real time access to such information. Also, only the ILECs are in possession of information such as the identity of which carrier the customer left and which carrier the customer selected.[36]

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[33] Order at ¶107

[34] Order at ¶¶108-110.

[35] Order at ¶107.

[36] The only information IXCs are provided by the ILECs is disconnect and connect information.

As a result, ILECs are competitive advantaged because only they can direct their sales pitch compared to specifically identified carriers.[37]

The Commission should clarify that an executing carrier is prohibited from using information gained from a carrier change request or freeze modification to "win back" the customer after the carrier change is completed and the customer has been disconnected, even if the disconnect order codes reveal that the customer's service was disconnected as the result of a carrier change order.

V. The Commission Correctly Prohibited Executing Carriers From Verifying Carrier Change Requests

The Rural LEC Coalition requests that the Commission reconsider its decision to prohibit executing carriers from verifying carrier changes. The Rural LEC Coalition claims that executing carriers should be permitted to verify carrier changes in order to prevent unauthorized conversions,[38] and because customers of the Rural LEC Coalition carriers purportedly expect the ILEC to verify all carrier changes.[39] SBC requests that the Commission clarify that the practice of verifying the Responsible Organization ("RESP ORG") carrier changes for 800 service be recognized as an exception to the Order's prohibition of verification of carrier change requests.[40] Excel, RCN and MediaOne request that the Commission clarify that the LEC must verify the

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[37] Also, see n. 10, infra.

[38] Rural LEC Coalition at 3.

[39] Rural LEC Coalition Petition at 9.

[40] SBC Petition at 13.

customer's order in situations where the IXC chosen by the customer is the LEC itself, or an affiliate of the LEC.

The Commission has correctly determined that, while "verification by executing carriers of carrier changes could help deter slamming, ...permitting executing carriers to verify independently carrier changes that have already been verified by submitting carriers could have anticompetitive effects."[41] The Commission rightly points out that it has concerns that executing carriers would have both the incentive and the ability to delay or deny carrier changes, using verification as an excuse, in order to benefit themselves or their affiliates.[42]

The Rural LEC Coalition claims that the record in the instant proceeding reflects that rural LECs typically experience 40% to 50% subscriber rejection of change requests submitted by IXCs.[43] For example, in its petition the Rural LEC Coalition claims that Pineland Telephone Cooperative (located in Metter, Georgia) reported an 86% (105 out of 122) rejection rate of ILEC verified carrier changes for September 1998. The Rural LEC Coalition's Petition validates the Commission's concern. Pineland competes in the intraLATA market for the very customers that have selected MCI. It is not surprising that its rejection of verified change requests is high given that Pineland Telephone would like to serve the customers that have selected MCI

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[41] Order at ¶99

[42] Id.

[43] Rural LEC Coalition Petition at 4.

WorldCom.[44]This is the type of ILEC behavior the Commission's current rules are designed to prevent.

The Rural LEC Coalition also claims that executing carriers should be permitted to verify carrier changes because its members' customers generally call the executing carrier first when slammed. As MCI WorldCom explains earlier in these reply comments, the Joint Petitioners TPA proposal is the solution to this problem. The Joint Petitioner's TPA proposal gives consumers, government agencies, and carriers a single point of contact that will: (1) quickly resolve customer allegations of unauthorized conversions; (2) independently determine a carrier's compliance with the Commission's verification procedures; (3) honor Commission's requirements that customers be compensated for their inconvenience; and (4) administer carrier-to-carrier liability. Most importantly, it will accomplish these essential functions in a competitively neutral and cost efficient manner.

In its Petition for Reconsideration and For Clarification, SBC requests that the

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[44] The Rural LEC Coalition also provides a list of alleged false statements made by MCI customer service and sales representatives to support its contention that only the ILEC can be trusted to act in the customer's best interest (see Rural LEC Coalition Petition at 6-8). First, these claims are unsupported. Second, not only do MCI WorldCom customer service and sales representatives take an initial and ongoing training course that focuses on Local Toll, but their actions are monitored by supervisors and "off-site quality monitoring" teams (that provide general monitoring of sales representatives, quality and coaching development, and appropriate escalation of abuses). Finally, given the costs associated with setting up new accounts and customer churn, it is not in MCI WorldCom's business interest to acquire customers that have not selected MCI WorldCom as his or her authorized provider given that such customers would likely change carriers in a short period of time.

Commission clarify that the practice of verifying the Responsible Organization ("RESP ORG") carrier changes for 800 service be recognized as an exception to the Order's prohibition of verification of carrier change requests.[45] The Commission's rules prohibit separate LEC verification of all services. Toll-free numbers can therefore be ported without the SBC practice of a written LOA, provided that the company porting over can prove that they have a valid verification method acceptable under the Commission's rules. SBC offers no reasoned explanation for its proposed exemption other than SBC has a history of verifying RESP ORG carrier changes for 800 service.[46] Once again, SBC is simply trying to game the rules so that it can leverage its executing carrier position into a competitive advantage.

Excel, RCN and MediaOne request that the Commission clarify that the LEC must verify the customer's order in situations where the IXC chosen by the customer is the LEC itself, or an affiliate of the LEC. More specifically, the Commission should clarify that if a LEC-initiated installation chooses an IXC unaffiliated with the LEC for both long distance and local toll, then no verification is necessary under the Commission's rules. However, in instances where the LEC or its affiliate has an interest in, and obtains, the long distance customer, the LEC must verify the selection (e.g., if a customer chooses a LEC for intraLATA service, the LEC must verify the order because, in that instance, the LEC is both the authorized and executing carrier). Such an interpretation is necessary to prevent ILECs from implementing PIC changes in a self-serving,

[45] SBC Petition at 13.

[46] Id.

anticompetitive manner. Such a clarification is also necessary to protect customers and ILEC competitors.

VI. Federal and State Regulators Can, and Should, Work Together to Control Unauthorized Carrier Changes Without Raising Barriers to Entry

Excel and RCN request that the Commission preempt state regulation of verification procedures for carrier change request. MCI WorldCom agrees with the Commission that Section 258 charges the Commission with the responsibility for establishing verification procedures for carriers who "submit or execute a change in a subscriber's selection of a provider or telephone exchange service or telephone toll service."[47] MCI WorldCom also agrees with the Commission that states and the Commission have a long history of working together to combat slamming and that state involvement is of great importance to controlling the fraudulent behavior of some carriers. However, given MCI WorldCom's experience as a national provider of telecommunication services, MCI WorldCom supports Excel's and RCN's concern that a patchwork of ever more stringent state-specific verification procedures can raise a carrier's costs so significantly that a carrier may not enter geographic markets that it might otherwise have entered.

To prevent such barriers of entry from developing, MCI WorldCom urges to the Commission to permit state regulation of verification procedures, but to limit the requirements of state verification regulations to that ordered by the Commission (i.e., states may have state-

[47] Order at ¶89 citing 47 U.S.C. §258(a).

specific verification requirements, but the requirements may be no more onerous or stringent than those required by the Commission). Such a partnership will ensure that state and Federal regulators can continue to work together to counter the problem of slamming, while allowing carriers to predict and control costs when entering varied geographic markets.

VII. PIC Changes Should Be Neutrally-Administered and Cost Based

SBC requests clarification in its petition that the PIC Switchback offering in the SBC FCC tariffs should not be withdrawn as a result of the Commission's Order.[48] The SBC PIC Switchback offering, as is the case with other ILEC's PIC switchback offerings, was tariffed to enable IXCs to pay for the return of the customer to its formerly authorized carrier on a no-fault basis. As SBC points out, the process enables both the IXCs and the ILECs to avoid the costly process required to investigate slamming allegations.

MCI WorldCom urges the Commission to require ILECs that currently offer no-fault PIC switchback services to maintain such offerings on a tariffed basis until final action is taken -- including the exhaust of court appeals -- in the hotly contested slamming proceeding. Removal of the switchback offering in the interim would unnecessarily adversely impact customers, IXCs, and ILECs, with no offsetting benefit.

The Commission should, however, examine the lawfulness of the exorbitant charges ILECs continue to charge IXCs for PIC changes. As MCI WorldCom has previously illustrated, ILEC-administered PIC change processes are extremely expensive. PIC change charges are today

[48]SBC Petition at 6.

$5.00, the same level as when the ILECs first filed their PIC change tariffs in 1984. There was no cost support for the size of the PIC that the Commission found reliable, and the $5.00 charge did not then — and does not now — reflect a cost based rate.[49] MCI WorldCom believes that PIC charges are well above cost, and operate as an impediment to competition in the long distance market, if not as an example of an unlawful price squeeze. In contrast, a neutrally-administered third party PIC process should result in cost-based rates, since the vendor will have every incentive to submit a bid based on cost and provide service in an efficient manner.

VIII. Conclusion

The pleading cycle for the Joint Petition is complete; the time is ripe for the Commission to promote industry's efforts to establish an independent third party administrator, as outlined in the Joint Petitioner's waiver request. Establishing an independent TPA is the fastest and most efficient way to resolve the many issues surrounding the Commission's, and industry's, efforts to mitigate unauthorized conversions, and should take precedence to resolving issues raised in petitions for reconsideration, filed in the instant proceeding.

The TPA proposed in the Joint Petition, when combined with third party verification methods employed by companies such as MCI WorldCom, is consistent with Section 258 and offers customers protection from unauthorized carrier changes in a straight forward manner, and would give consumers, government agencies, and carriers a single point of contact that will: (1)

[49] In fact, BellSouth changed its PIC fee to $1.65, in recognition of the automated processes that now exist with in the larger ILECs to handle PIC charges.

quickly resolve customer allegations of unauthorized conversions; (2) independently determine a carrier's compliance with the Commission's verification procedures; (3) honor Commission's requirements that customers be compensated for their inconvenience; and (4) administer carrier-to-carrier liability.

Respectfully submitted,
MCI WORLDCOM, Inc.

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June 23, 1999

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on June 23, 1999.

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CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers of MCI WorldCom, Inc. were sent via first class mail, postage paid, to the following on this 23rd day of June, 1999.

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